## NOT FOR PUBLICATION

## UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

VICTOR MONDELLI,

:

Plaintiff,

Civil Action No. 16-1569 (ES) (ESK)

**v.** 

**ORDER** 

BERKLEY HEIGHTS NURSING & REHABILITATION CENTER, et al,

:

Defendants.

:

## SALAS, DISTRICT JUDGE

This matter having come before the Court upon requests (D.E. Nos. 73 & 75) by defendants Berkley Heights Nursing & Rehabilitation Center, Marina Ferrer, and Diane Wilverding (together "Defendants") that this matter be dismissed with prejudice pursuant to the Court's June 2, 2023, letter order (D.E. No. 70 (the "June 2, 2023 Order")), and it appearing that

- 1. On June 2, 2023, the Court issued a letter order denying Plaintiff's appeal and affirming the Honorable Magistrate Judge Kiel's order administratively terminating this action, pending Plaintiff's compliance with discovery requests. (*Id.*).
- 2. In the June 2, 2023 Order, the Court specifically ordered Plaintiff to "(i) provide releases for his relevant medical providers, or, alternatively, submit to Defendants the specific names and approximate dates of treatment for his medical providers so that Defendants can prepare medical releases for Plaintiff to sign; (ii) submit to a deposition; and (iii) submit to an independent medical examination." (*Id.*).

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3. The June 2, 2023 Order further provided that a failure to comply with these

directives could result in a dismissal of this action with prejudice. (Id.).

4. More than six months have passed since the Court issued the June 2, 2023 Order

and Plaintiff has not complied with any of the directives therein. Accordingly, Plaintiff has failed

to respond to the outstanding discovery requests necessary for this Court to make a determination

of Plaintiff's present competency pursuant to Federal Rule of Civil Procedure 17. (See D.E. Nos.

73 & 75). In fact, Plaintiff and his counsel failed to appear at a July 19, 2023, telephone conference

(D.E. No. 74), and have provided no response to the Court's June 2, 2023 Order or Defendants'

requests for dismissal. Consistent with the Court's June 2, 2023 Order, therefore, this action must

be dismissed.

Accordingly, IT IS on this 8th day of February, 2024,

**ORDERED** that this action be **DISMISSED** with prejudice; and it is further

**ORDERED** that the Clerk of the Court **CLOSE** this matter.

s/Esther Salas

Esther Salas, U.S.D.J.